



Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov/public/do/PRAMain) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **Addresses** section on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, or ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any

changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Loans to Plan Participants and Beneficiaries Who Are Parties in Interest with Respect to The Plan Regulation

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0076.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 2,576.

Responses: 2,576.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): \$1,069,632.

Description:

Section 408(b)(1)(C) of ERISA requires plan loans to be made in accordance with specific provisions set forth in the plan document. The Department's regulation at 29 CFR 2550.408b-1(d) prescribes eight specific provisions that must be included in the plan documents, including: (1) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish such a loan program; (2) the identity of the person or position authorized to administer the program; (3) a procedure for applying for loans; (4) the basis on which loans will be approved or denied; (5) limitations (if any) on the types and amounts of loans offered; (6) the procedure for determining a reasonable rate of interest; (7) types of collateral that may secure a participant loan; and (8) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

The information will be used by plan participants and beneficiaries wishing to obtain plan loans. It also will be used by plan administrators in administering their plans' loan program. The Department also will use the information in any enforcement proceedings regarding plan loans. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0076. The current approval is scheduled to expire on July 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 1985-68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0094.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 69.

Responses: 325.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description:

Prohibited Transaction Exemption 85-68 provides that a plan is exempt from ERISA sections 406(a), 406(b)(1) and (2), and 407(a) with respect to the acquisition, holding, or resale of customer notes, executed along with a security agreement for tangible personal property, from an employer of employees covered by the plan in the ordinary course of the employer's business activity, provided that the conditions of the exemption are met. The customer notes must have been accepted by the employer in its primary business activity as the seller of tangible personal property that is being financed by the notes. The exemption does not apply to notes of an employer's affiliate.

The Department has included in the class exemption a recordkeeping provision, whereby plans are required to maintain the records, information, and data which relate to plan investments in customer notes that is otherwise required to be maintained. The class exemption requires that those records be made available to certain persons on request. Without this recordkeeping requirement, the Department would be unable to effectively enforce the terms of the exemption and ensure user compliance. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0094. The current approval is scheduled to expire on July 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0039.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 3,033,000.

Responses: 112,733,000.

Estimated Total Burden Hours: 162,956.

Estimated Total Burden Cost (Operating and Maintenance): \$235,556,141.

Description:

The Department has promulgated regulations governing the content and furnishing of SPDs, SMMs, and SMRs at 29 CFR 102-2 (Style and Format of Summary Plan Descriptions); 29 CFR 2520.102-3 (Contents of Summary Plan Descriptions); 29 CFR 2520.102-4 (Option for Different Summary Plan Descriptions); 29 CFR 2520.2520.104b-1 (Disclosure); 29 CFR 2520.104b-2 (Summary Plan Descriptions); 29 CFR 104b-3 (Summary of Material Modifications to the Plan and Changes in the Information Required to be Included in the

Summary Plan Description); and 29 CFR 104(b)-(4) (Alternative Methods of Compliance for Furnishing the Summary Plan Description and Summaries of Material Modifications of a Pension Plan to a Retired Participant, a Separated Participant, and a Beneficiary Receiving Benefits). These regulations set standards for the content of these disclosure documents, the methods of furnishing that will satisfy the statutory disclosure requirements, and alternative methods of compliance. In particular, regulations at 29 CFR 2520.104b-1(c) specifically describe the circumstances under which the administrator of an employee benefit plan may furnish required disclosure documents, including the SPD/SMM/SMR, through electronic media.

The Department's regulations contain information collections that constitute mandatory third-party disclosure requirements applicable to the majority of ERISA-covered pension and welfare benefit plans. The Department has determined that these information collections are necessary in order to ensure the participants and beneficiaries in employee benefit plans covered under ERISA receive adequate information about the benefits due to them and their rights under the plans. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0039. The current approval is scheduled to expire on August 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures for Participant Directed Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0090.

Affected Public: Businesses or other for-profits.

Respondents: 569,969.

Responses: 769,693,310.

Estimated Total Burden Hours: 5,914,334.

Estimated Total Burden Cost (Operating and Maintenance): \$223,980,233.

Description:

The Department published a final regulation under ERISA section 404(a), with conforming amendments to the regulations under ERISA section 404(c) that requires plan fiduciaries to disclose plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (e.g., 401(k)-type plans) for plan years that began on or after January 1, 2010 and at least annually thereafter (defined by regulation as at least once in any 14-month period, without regard to whether the plan operates on a calendar or fiscal year basis).

The final rule, 29 CFR 2550.404a-5(c), requires three sub-categories of Plan-related information to be provided to participants and beneficiaries. The first sub-category is General Plan Information, which includes how participants may give investment instructions or exercise proxy voting or tendering rights, restrictions on transferring account assets among investment alternatives, and identification of the plan's designated investment alternatives and designated investment managers (29 CFR 2550.404a-5(c)(1)). The second sub-category of Plan-related information is Administrative Expense Information, which refers to explanations of any fees and expenses for general plan administrative services (e.g., legal, accounting, recordkeeping) charged to individual accounts and the basis for allocating such charges among the accounts (e.g., pro-rata, per capita). (29 CFR 2550.404a-5(c)(2)). The third sub-category of Plan-related information is Individual Expense Information, which describes expenses assessed against accounts based on the actions taken by individual participants or beneficiaries. This would include charges for processing participant loans and qualified domestic relations orders. (29 CFR 2550.404a-5(c)(3)).

The rule also requires plan administrators to disclose three sub-categories of investment-related information to participants and beneficiaries on or before their date of eligibility, which relates to the plans designated investment alternatives. The first sub-category of information is information required to be provided automatically. (29 CFR 2550.404a-5(d)(1)). For each designated investment alternative, the plan must disclose specified identifying information, past

performance data, comparable benchmark returns, fee and expense information, and an Internet website address that is sufficiently specific to lead participants and beneficiaries to specified supplemental information for each investment alternative. The latest information available to the plan must be furnished annually. Material changes to this information must be disclosed at least 30 days but no more than 90 days before the effective date of the change except for unforeseen events or circumstances beyond the plan administrator's control. Investment-related information must be furnished in a chart or similar format designed to help participants compare the plan's investment alternatives across each category of information. (29 CFR 2550.404a-5(d)(2)). To facilitate compliance, the rule includes a model chart that may be used by plan fiduciaries to satisfy this requirement. The second sub-category of investment-related information is Post-Investment Information. Following a participant's investment in an alternative, the plan administrator must provide any materials it receives regarding voting, tender or similar rights in the alternative ("pass-through materials") to the extent such rights are passed through to the participant or beneficiary. (29 CFR 2550.404a-5(d)(3)). The third sub-category of investment-related information is Information to be provided upon Request (29 CFR 2550.404a-5(d)(4)). Participants may request the plan to provide prospectuses, financial reports, as well as statements of valuation and a list of assets held by an investment alternative.

The information collection describes the timeframes and acceptable format for providing the disclosures. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0090. The current approval is scheduled to expire on August 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Electronic Disclosure by Employee Benefit Plans

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0121.

Affected Public: Businesses or other for-profits.

Respondents: 757,635.

Responses: 82,853,832.

Estimated Total Burden Hours: 1,567,541.

Estimated Total Burden Cost (Operating and Maintenance): \$21,441,854.

Description:

On January 28, 1999, the Department published a notice of proposed rulemaking on electronic disclosure and recordkeeping issues (64 FR 4506). Where, previously, only group health plans had specifically been provided with a safe harbor for electronic disclosure, the proposal expanded the use of electronic disclosure to include all pension and welfare benefit plans covered by Title I of ERISA. In addition, the proposal added summary annual reports to the list of disclosure documents included in the safe harbor provisions. On April 9, 2002, the Department published a notice of final rulemaking on electronic disclosure and recordkeeping issues (67 FR 17264) to establish a “safe harbor” for the use of electronic media to satisfy the general furnishing requirement. In 2020, the Department issued a final rule providing a new safe harbor (Notice-and-Access Safe Harbor) for plan administrators who wish to satisfy ERISA’s delivery requirements for retirement plan documents by posting them on a website and notifying workers of the online availability of such documents (85 FR 31884).

The information collection contains a third-party disclosure. The consent serves to demonstrate to the plan administrator that an individual has the ability to access information in the electronic form that will be used for disclosure purposes. Such confirmation will ensure the compatibility of the hardware and software between the individual and the plan, and will also serve to demonstrate that the administrator has taken appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt, as required under ERISA. Lastly, where applicable, the consent provides a means for the individual to provide the plan with the correct e-mail address to facilitate the efficiencies that may arise from the use of electronic technologies where appropriate.

Retirement plan administrators may satisfy their obligation to furnish ERISA-required disclosures by making the information accessible online and furnishing a notice of internet availability of these disclosures to covered individuals. The notice of internet availability must be sent to the electronic address of the participant, for example to the participant's email address and include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must be sent each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," the 2019 final rule allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0121. The current approval is scheduled to expire on August 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Defined Benefit Plan Annual Funding Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0126.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 32,165.

Responses: 65,526,626.

Estimated Total Burden Hours: 197,336.

Estimated Total Burden Cost (Operating and Maintenance): \$7,080,504.

Description:

In 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21). The law provides funding interest rate stabilization for single employer defined benefit (DB) plans, effective for plan years beginning on and after January 1, 2012. MAP-21 set a floor (or ceiling) for the interest rates that single employer defined benefit plan administrators

generally are required to use to calculate contributions. Under the rules, the generally required interest rates are limited to rates that are within a specified range, or corridor, above or below a 25-year average for the rates.

Section 40211(b)(2)(A) of MAP-21 amended ERISA section 101(f)(2) by adding a new subparagraph (D), which requires single-employer defined benefit plan administrators to disclose additional information in the annual funding notice for a plan year beginning after December 31, 2011, regarding the effect of the MAP-21 segment rate stabilization rules on plan liabilities and the plan sponsor's minimum required contributions to the plan. Section 40211(b)(2)(B) of MAP-21 directed the Department to modify the model annual funding notice required under section 501(c) of the Pension Protection Act of 2006 (PPA), to prominently include the supplemental information required under ERISA section 101(f)(2)(D). The Department issued Field Assistance Bulletin (FAB) 2013-01 to address issues related to the disclosures required by section 101(f)(2)(D) and to provide a model segment rate stabilization supplement for the annual funding notices of single-employer plans. The Department subsequently issued FAB 2015-01 to address changes made to the segment stabilization rules and the supplement required by section 101(f)(2)(D) by the Highway and Transportation and Funding Act of 2014. The segment rate stabilization rules and section 101(f)(2)(D) of ERISA were further modified by the Bipartisan Budget Act of 2015, the American Rescue Plan Act of 2021, and the Infrastructure Investment and Jobs Act extending the requirement to furnish the segment rate stabilization requirement through the 2034

The Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113-97 (2014) added a new subparagraph (E) to section 101(f)(2) of ERISA which required CSEC plans to include additional information in their annual funding notices. The Department reserved section 2520.101-5(m) of the final regulation for CSEC plans.

The Multiemployer Pension Reform Act of 2014 (MPRA), Pub. L. 113-235 (2014), added new disclosure requirements to section 101(f)(2)(B) of ERISA relating to the new

multiemployer funding classification of “critical and declining status.” A plan is in critical and declining status if it is in critical status and is projected to become insolvent within 15 years (or within 20 years if a special rule applies). MPRA requires the annual funding notice of critical and declining status plans to include the projected date of insolvency; a clear statement that such insolvency may result in benefit reductions; and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency. These requirements were added to the final regulation and the multiemployer plan model notice to reflect the MPRA amendments to ERISA section 101(f) and are included in the hour burden to complete that notice.

MPRA requires the annual funding notice of critical and declining status plans to include the projected date of insolvency; a clear statement that such insolvency may result in benefit reductions; and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency. These requirements were added to the final regulation and the multiemployer plan model notice to reflect the MPRA amendments to ERISA section 101(f).

On February 2, 2015, the Department published final rules implementing ERISA section 101(f). As required by statute, the final rule requires the plan administrator of a defined benefit pension plan that is subject to the Pension Benefit Guaranty Corporation’s Insurance Program to furnish a funding notice annually to participants, beneficiaries, labor organizations representing such participants or beneficiaries, employers obligated to make contributions to a multiemployer plan, and the Pension Benefit Guaranty Corporation (PBGC). Large plans must furnish the notice by the 120th day following the end of the plan year to which the notice relates. A small plan may furnish a funding notice on or before the due date, with extensions, of the plan’s Form 5500 Annual Return/Report filed with the Department.

The final rule provides guidance and model annual funding notices. Administrators of single and multiemployer defined benefit plans can use the guidance provided in the final rule (and the included model notices) to furnish an annual notice of the plan’s funded status to the plan’s participants and beneficiaries and other specified interested parties (each labor

organization representing such participants or beneficiaries, each employer that has an obligation to contribute under the plan, and the PBGC) as required by ERISA 101(f). The Department has received approval from OMB for this ICR under OMB Control No. 1210-0126. The current approval is scheduled to expire on August 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0132.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 296,568.

Responses: 39,548,933.

Estimated Total Burden Hours: 76,011.

Estimated Total Burden Cost (Operating and Maintenance): \$2,073,509.

Description:

The Department of Labor finalized a regulation under ERISA section 404(c)(5)(A). The regulation offers guidance on the types of investment vehicles that plans may choose as their “qualified default investment alternative” (QDIA). The regulation also outlines two types of information collections. First, it implements the statutory requirement that plans provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass any pertinent materials they receive from a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. These two information collections are necessary to inform participants and beneficiaries, who do not make investment elections, of the consequences of their failure to elect investments, the ways in which their account assets will be invested through the QDIA, and of their continuing opportunity to make other investment elections, including options available

under the plan. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0132. The current approval is scheduled to expire on August 31, 2023.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Registration Requirements to Serve as a Pooled Plan Provider to Pooled Employer Plans-Form PR.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0164.

Affected Public: Businesses or other for-profits.

Respondents: 1,660.

Responses: 2,813.

Estimated Total Burden Hours: 1,676.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description:

Section 101 of The Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act) amended ERISA section 3(2) and added new sections 3(43) and 3(44) to establish a new type of ERISA-covered retirement savings plan called a “pooled employer plan.” Among other requirements, pooled employer plans must be operated by a designated “pooled plan provider.” The SECURE Act provides that pooled plan provider” can begin offering pooled employer plans” on January 1, 2021, as long as pooled plan providers register with the Labor Department (the Department) and the Treasury Department (Treasury) before beginning operations as a pooled plan provider.

The final rule requires an initial registration filing and supplemental filings to report changes in the information in the initial filing, information about each specific pooled employer plan at its inception, and information on specified reportable events, time-sensitive knowledge of which will allow the Agencies to carry out their joint oversight responsibilities and for

participating employers to be able to exercise their fiduciary duties to select and monitor pooled plan providers. The final rule requires a final filing once the provider's last pooled employer plan has been terminated and ceased operations.

The initial registration, supplemental filing, and final filing requirements will provide the Agencies with timely access to information needed to help them protect plan participants and beneficiaries and conduct effective monitoring and oversight of pooled employer plans and pooled plan providers as required by the SECURE Act. Without this kind of timely information, the Agencies would typically not learn of risks to a pooled employer plan until the plan files a Form 5500, possibly many months after the event (assuming the information was even required to be reported on the Form 5500), and when opportunities for protecting plan participants from financial injury have been missed. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0164. The current approval is scheduled to expire on November 30, 2023.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 1st day of February 2023.

Lisa M. Gomez,

Assistant Secretary,

Employee Benefits Security Administration,

U.S. Department of Labor.

[FR Doc. 2023-02621 Filed: 2/7/2023 8:45 am; Publication Date: 2/8/2023]